

City of Detroit



CITY COUNCIL

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TO: The Honorable City Council

FROM: David Whitaker 
Elizabeth Cabot 

DATE: February 3, 2006

RE: **PROPOSED ORDINANCE RESTRICTING THE USE OF
CELLULAR TELEPHONES WHILE DRIVING**

At the Honorable City Council's request, the Research and Analysis Division (RAD) reviewed the proposed ordinance drafted by the Law Department as well as the statewide legislation pending in the Legislature. RAD also surveyed ordinances and statutes passed by other jurisdictions.

I. Proposed City of Detroit Ordinance

The proposed amendment to Chapter 55, Traffic and Motor Vehicles (attached as exhibit 1), adds definitions for the following relevant terms: "engage in a call", "hands-free mobile telephone", "hand-held mobile telephone", "mobile telephone", "using a mobile telephone", and "wireless telephone service." If adopted, Article IV of Chapter 55, entitled "Operation of Vehicles", would be amended to add section 55-4-28 entitled "Use of a mobile telephone while operating a vehicle." The section would prohibit the use of a mobile telephone "whether hands-free or hand-held" while driving. The only exceptions would be for purposes of summoning emergency personnel (*i.e.*, police, fire, ambulance, etc.) or for use by emergency personnel. Violation would be a civil infraction with fines of up to \$100.00 plus court costs.

II. Pending State of Michigan Legislation

Four bills are currently pending in the Michigan Legislature -- three in the House of Representatives and one in the Senate. All of the bills seek to amend existing portions of the State's Motor Vehicle Code, MCL 257.1 *et seq.*

Senate Bill (SB) 814 (introduced October 18, 2005 and referred to the Committee on Technology and Energy) and *House Bill (HB) 5483* (introduced December 6, 2005 and referred to the Committee on the Judiciary). (Attached as Exhibits 2 and 3) These bills would:

- require the Secretary of State (SOS) to add an additional point to a person's driving record if the use of a cellular phone contributed to a traffic violation;
- increase by \$25 the civil fine for a person determined to be responsible or responsible "with explanation" for a traffic violation, if use of a cellular phone contributed to the violation;
- prohibit an individual with a temporary instruction permit or Level 1 or 2 graduated licensing status from using a handheld cell phone while operating a motor vehicle and provide that a violator would be responsible for a civil infraction;
- require the Michigan Department of State Police (MSP) to report to the House and Senate standing committees on transportation concerning whether, in the interest of public safety, it would be advisable to limit drivers to using only hands-free cell phones while driving on the State's highways; and
- require the SOS, in conjunction with the MSP, to report to the legislative standing committees on transportation two years after the bill took effect on the number of cases in which a cell phone contributed to a violation of the Code for which a civil fine was imposed.

MCL 257.320a. See, Senate Fiscal Analysis Committee Summary Report of 11/09/05.

HB 5053 (introduced July 13, 2005 and referred to the Committee on Transportation) prohibits use of a handheld phone while driving (without reference to the age of the driver) except (1) if using a "hands-free feature", (2) if the vehicle is not in motion, or (3) if summoning help in the case of a health or safety emergency. (Attached as Exhibit 4)

Finally, *HB 5133* (passed by the House on October 20, 2005 and referred to the Senate Committee on Technology and Energy) would amend the Michigan Vehicle Code (MVC) to prohibit a person younger than 18 from using a cell phone while driving, except in an emergency. Like the proposed Detroit ordinance, a violation would be a civil infraction. (Attached as Exhibit 5)

III. Legislation Regulating Mobile Phone Use in Other U.S. Jurisdictions

Recognizing the need to regulate cell phone usage by drivers, states and municipalities around the country are considering passage of statutes and ordinances. New York was the first state to pass statewide legislation. The New York statute provides that "no person shall operate a motor vehicle upon a public highway while using a mobile telephone to engage in a call while such vehicle is in motion." The statute does not apply to use by emergency personnel, calls to emergency personnel, or "use of a

hands-free mobile telephone". N.Y. Veh. & Traf. Law §1225-C. Like the proposed Detroit ordinance, violation is a civil infraction.

A survey compiled by the National Conference of State Legislatures (attached as Exhibit 6) provides a brief summary of efforts in other states to regulate mobile phone use. As the summary indicates, only Connecticut, New York, New Jersey and the District of Columbia prohibit the use of handheld cell phones while driving. **Significantly, all of these jurisdictions allow the use of mobile phones with hands-free capability, i.e., with a hands-free accessory/headset or speaker.** Several states specifically prohibit the use of mobile phones by school bus drivers and/or young drivers. Some jurisdictions, such as Connecticut, will reduce the assessed penalty if the offending driver produces proof of purchase of a hands-free accessory prior to the imposition of a fine.

With respect to possible unintended consequences of classifying prohibited mobile phone use as a moving violation/civil infraction -- *i.e.*, increased insurance rates resulting from assessment of points or additional points where cell phone use contributes to a traffic accident -- this scheme appears to be uniformly applied across the country, as well as by the Michigan Legislature.

Finally, studies of the hazards posed by driver cell phone use consistently find driver distraction to be the greatest danger. The danger is no less problematic for hands-free use of cell phones. (See attached Exhibit 7, Insurance Information Institute report) Despite this finding, RAD is not aware of any jurisdiction that has imposed a total prohibition of mobile phone use while driving.

RAD will continue to monitor the progress of proposed State legislation and will be happy to address any further questions posed by this Honorable Body.

attachments

EXHIBIT 1
PROPOSED DETROIT ORDINANCE

1
2 CHAPTER 55. TRAFFIC AND MOTOR VEHICLES

3 ARTICLE I. IN GENERAL
4

5 Sec. 55-1-1. Definitions.

For purpose of this chapter, the following words and phrases shall have the meanings
7 respectively ascribed to them by this section:

Alley means a public way within a block primarily intended for service and access to abutting
9 property.

Authorized emergency vehicle means either of the following:

- 11 (1) Fire department vehicles, police department vehicles, ambulances, or privately owned
motor vehicles of volunteer or paid firefighters where authorized by the fire
13 commissioner, or privately owned motor vehicles of volunteers or paid members of
a life support agency that is licensed by the Michigan Department of Consumer and
15 Industry Services where authorized by the life support agency; or
- (2) For purposes of Section 698(5)(c) of the Michigan Motor Vehicle Code, being MCL
17 257.698(5)(c), during an emergency, a vehicle owned and operated by a federally
recognized nonprofit charitable organization that is used exclusively for assistance
19 during such emergency.

Block means a tract of land bounded by streets or by a combination of streets, public parks,
21 cemeteries, railroad rights-of-way, harbor lines, centerlines of waterways, or corporate boundary
lines of the City of Detroit.

1 *Boat* means any vehicle, with or without motive power, that is designed for carrying persons
or property on the water.

3 *Bus* means a motor vehicle, other than a school bus, that is designed for carrying sixteen (16)
or more passengers, including the driver.

5 *Business district* means the territory contiguous to a highway where fifty (50) percent or more
of the frontage thereon for a distance of three hundred (300) feet or more is occupied by buildings
7 in use for business.

9 *Civil infraction* means an act or omission that is prohibited by this Code which is not a crime
as defined in Section 5 of the Michigan Penal Code, being MCL 750.5 and for which civil sanctions
may be ordered.

11 *Commercial street* means any portion of any street or highway that is not a residential street.

13 *Commercial vehicle* means a motor vehicle that is used for the transportation of passengers
for hire, or constructed or used for transportation of goods, wares, or merchandise and/or a motor
vehicle that is designed or constructed and used for pulling other vehicles and does not carry any part
15 of the weight of the vehicle which is being, and, with reference to provisions of this chapter which
govern parking enforcement, a motor vehicle without a displayed commercial license plate shall not
17 be considered a commercial vehicle.

Crosswalk means:

- 19 (1) The part of a roadway at an intersection included within the connections of the lateral
lines of the sidewalks on opposite sides of the highway measured from the curbs, or,
21 in the absence of curbs, from the edges of the traversable highway; or
- (2) Any portion of a highway at an intersection or elsewhere distinctly indicated for

1 pedestrian crossing by lines or other markings on the surface.

3 *Cruising taxicab* means a taxicab in which the taxi-meter flag is in an upright position in the
taxicab or a taxicab unoccupied by passengers.

5 *Disabled person* means a person who is determined by a licensed physician or an optometrist
to have one (1) or more of the following physical characteristics:

- (1) Blindness as determined by an optometrist or a physician;
- (2) Inability to walk more than two hundred (200) feet without having to stop and rest;
- (3) Inability to do both the following:
 - 9 a. Use one (1) or both legs or feet;
 - b. Walk without the use of a wheelchair, walker, crutch, brace,
11 prosthetic or other device, or without the assistance of another person;
- (4) A lung disease from which the person's forced expiratory volume for one (1) second,
13 when measured by spirometry, is less than one (1) liter, or from which the person's
arterial oxygen tension is less than sixty (60) mm/hg of room air at rest;
- (5) A cardiovascular condition that causes the person to measure between three (3) and
15 four (4) on the New York Heart Classification Scale, or that renders the person
17 incapable of meeting a minimum standard for cardiovascular health as established
by the American Heart Association and approved by the Michigan Department of
19 Public Health;
- (6) An arthritic, neurological, or orthopedic condition that severely limits the person's
21 ability to walk; or
- (7) The persistent reliance upon an oxygen source other than ordinary air.

1 *Divided roadway* means that portion of a highway improved, designed or ordinarily used for
vehicular travel, in two (2) or more parts, separated longitudinally by parkways, tunnel approaches,
3 canals or areas not available to immediate and continuous access to vehicular traffic from such
divided roadways.

5 *Double parking, double standing or double stopping* means the parking, standing or stopping
of a vehicle upon the roadway side of another vehicle parking, standing or stopping.

7 *Driveway* means the portions of the zoning lot that has been designated, designed, and
improved to afford a suitable means and a direct route for vehicular access to the private parking
9 garage or to a rear yard parking area, but does not include other portions of the zoning, lot, whether
improved or not improved, that are not within the most direct line or route leading from the access
11 street to the private parking garage or rear yard parking area.

Duly authorized representative means a person or an attorney who has the permission of the
13 registered owner of a vehicle or vehicles to settle, through negotiations and/or admission(s) of
responsibility, and to make payment of the amount due and owing by the registered owner regarding
15 any outstanding parking violation notice(s) or citation(s).

Engage in a call means talking into or listening on a hand-held or hands-free mobile
17 telephone.

Farm tractor means every motor vehicle designed and used primarily as a farm implement
19 for drawing plows, mowing machines and, other implements of husbandry.

Freeway means a divided arterial highway for through traffic with full control of access and
21 with all crossroads separated in grade from pavements for through traffic.

Hands-free mobile telephone means a mobile telephone that has an internal feature or

1 function, or that is equipped with an attachment or addition, whether or not permanently part of such
2 mobile telephone, by which a user engages in a call without the use of either hand, whether or not
3 the use of either hand is necessary to activate, deactivate or initiate a function of such telephone.

4 *Hand-held mobile telephone* means a mobile telephone with which a user engages in a call
5 using at least one hand.

6 *Immobilization*, under Article II of this Chapter, means the placement of a restraint on a
7 vehicle to prevent its operation.

8 *Impoundment*, under Article II of this Chapter, means the relocation of a vehicle by towing
9 to a pound for storage.

10 *Intersection* means:

11 (1) The area embraced withing the prolongation or connection of the lateral curb lines,
12 or, if none, the the lateral boundary lines of the roadways of two (2) highways which
13 join one or another at, or approximately at, right angles, or the area within which
14 vehicles traveling upon different highways joining at any other angle may come in
15 conflict; or

16 (2) Where a highway includes two (2) roadways thirty (30) feet apart, then every crossing
17 of each roadway of such divided highway by an intersecting highway shall be
18 regarded as a separate intersection. In the event such intersecting highway also
19 includes two (2) roadways thirty (30) feet or more apart, then every crossing of two
20 (2) roadways of such highways shall be regarded as a separate intersection.

21 *Limited access highway or freeway* means every highway, street or roadway which owners
or occupants of abutting lands and other persons have no legal right of vehicular access to or from

1 except at certain entry points, and in such manner, as may be determined by the public authority
having jurisdiction over such highway, street or roadway.

3 *Limousine* means a chauffeur-driven motor vehicle that is designed with seating capacity for
fifteen (15) persons including the driver, is not equipped with a taximeter, and is operated at hourly
5 rates established in accordance with section 58-2-6 of this Code.

7 *Loop district* means the area bounded on the south by the south line of East Jefferson Avenue
and West Jefferson Avenue; on the east by the east line of St. Antoine Street; on the north by the
north line of Columbia Street; and on the west by the west line of First Street.

9 *Major off-site parking generator* means a casino, hospital, institution, stadium, transportation
center, or such other facility that operates in the city and that, as a result of persons traveling to and
11 from the site in motor vehicles, creates a shortage of on-street parking in the area which prevents
area residents from parking at their residences.

13 *Metal tire* means every tire with a contact surface that is made in whole or part of metal or
other hard, nonresilient material.

15 *Mobile telephone* means the device used by subscribers and other users of wireless telephone
service to access such service.

17 *Motor home* means a motor vehicle constructed or altered to provide living quarters,
including permanently installed cooking and sleeping facilities, that is used for recreation, camping,
19 or other noncommercial activity.

21 *Motor vehicle* means every vehicle that is self-propelled, but does not include an electric
patrol vehicle being operated in compliance with the Michigan Electric Patrol Vehicle Act, being
MCL 257.1571 *et seq.*

1 *Motorcycle* means every motor vehicle that has a saddle or seat for the use of the rider and
is designed to travel on not more than three (3) wheels in contact with the ground, but does not mean
3 such vehicle as may be included within the term 'farm tractor,' as defined in this section.

Motor-driven cycle means every motorcycle with a motor that produces less than five (5)
5 gross brake horsepower, every motor scooter, and every bicycle with motor attached, except a
motorized wheelchair or other similar vehicle not exceeding one thousand (1,000) pounds gross
7 weight operated by a disabled person and except for pedal bicycles with helper motors that produce
less than one (1) brake horsepower when used by a disabled person.

9 *Municipal civil infraction* means either:

- (1) A municipal civil infraction violation notice; or
- 11 (2) A municipal civil infraction citation.

Normal atmospheric condition means weather without fog, rain or snow.

13 *Operator* means every person who is in actual physical control of a motor vehicle upon a
highway, and with reference to the provisions of this chapter which govern parking provisions, any
15 person parking or moving a vehicle whether or not remaining in such parked vehicle.

Owner means a registered owner as defined in this section.

17 *Parking* means the standing of a vehicle, whether or not occupied, upon a highway or street,
except when making necessary repairs or loading or unloading.

19 *Pedestrian* means any person afoot.

Pickup camper means a non-self-propelled recreational vehicle without wheels for road use,
21 that is designed to rest all of its weight upon, and to be attached to, a motor vehicle, and is intended
primarily for use as temporary living quarters in connection with recreational, camping, or travel

1 purposes, but does not include truck covers or caps consisting of only walls and a roof without floors
or facilities for using the camper as a dwelling.

3 *Pickup truck* means a four-wheel motor vehicle having an enclosed front cab and open body
with low sides and a tailgate, which may have an enclosure, cap, cover, or box over the rear exterior
5 bed.

Pickup zone means that portion of the street, thoroughfare or highway adjacent to the curb
7 or curblane where motor vehicles may park for the purpose of loading or unloading merchandise or
materials of a heavy or bulky nature only at adjacent commercial establishments for periods not to
9 exceed fifteen (15) minutes at any one (1) time.

Pneumatic tires means all tires that are inflated with compressed air.

11 *Pole trailer* means every vehicle without motive power that is designed to be drawn by
another vehicle and attached to the towing vehicle by means of a reach or pole, or by being boomed
13 or otherwise secured to the towing vehicle, and is ordinarily used for transporting long or irregular
shaped loads such as poles, pipes or structural members capable, generally, of sustaining themselves
15 as beams between the supporting connection.

Private driveway means any piece of privately owned and maintained property that is used
17 for vehicular traffic, but is not open to or normally used by the public.

Private passenger vehicle means every motor vehicle, other than a bus, commercial vehicle,
19 or taxicab, which is designed, used, or maintained primarily for the transportation of persons.

Private road means a privately owned and maintained road that allows access to more than
21 one (1) residence or place or business, which is normally open to the public and upon which persons
other than the owners of the residences or businesses also may travel.

1 *Railroad sign or signal* means any sign, signal, or device that is erected by authority of a
statute, public body or official, and is intended to give notice of the presence of railroad tracks or
3 structures, or the approach of a railroad train.

5 *Recreational equipment* means boats, snowmobiles, off-road vehicles, dune buggies, jet skis,
or other similar items.

7 *Registered owner* means a person who holds legal title of a vehicle as reflected in the records
of the Michigan Secretary of State.

9 *Residence district* means the territory contiguous to a highway, where the frontage on such
highway for a distance of three hundred (300) feet or more is mainly occupied by dwellings or by
dwellings and buildings, that are not in use or business.

11 *Residential parking permit area* means:

- 13 (1) An area that contains a minimum of six (6) contiguous block faces, or three (3)
 blocks facing each other or any contiguous combination thereof; or
- 15 (2) An area that contains less than a minimum of six (6) contiguous block faces, or three
 (3) blocks facing each other or any contiguous combination thereof, which has been
17 approved by the city council as a residential parking permit area, and consists
 primarily of residential dwellings where on-street parking is regulated, pursuant to
 section 55-2-10 of this Code, to provide residents of such designated areas with
19 reasonable access to on-street parking spaces at their residences.

21 *Residential street* means any portion of any street or highway that is adjacent to or abutting
any land that is either zoned R1, R2, R3, R4, R5, R6, or Residential PD in the Zoning Ordinance of
the City of Detroit, being Chapter 61 of this Code, or is developed with a single-family house, two-

1 family house, town, multiple-family dwelling, or rooming house.

3 *Restraint* means a device that is used to immobilize a vehicle such as a "boot" or a "Denver boot."

Right-of-way means the privilege of the immediate use of the highway.

5 *Road tractor* means every motor vehicle that is designed and used for drawing other vehicles, and is not constructed so as to carry any load thereon, either independently or any part of the weight
7 of a vehicle or load so drawn.

Roadway means the portion of a highway that is improved, designed or ordinarily used for
9 vehicular travel.

Safety zone means the area or space that is officially set aside within a highway for the
11 exclusive use of pedestrians and that is plainly marked or indicated by proper signs so as to be plainly visible at all times while set apart as a safety zone.

13 *Semitrailer* means every vehicle, with or without motive power, other than a poletrailer, which is designed for carrying persons or property and for being drawn by a motor vehicle and which
15 is so constructed that some part of its weight and that of its load rests upon or is carried by another vehicle.

17 *Service drive* means a street or roadway having the primary function of providing access to freeway entrances and exits.

19 *Solid rubber tire* means every tire that is made of rubber, other than a pneumatic tire.

Standing means the standing of a passenger vehicle upon a street with an operator in the
21 driver's seat, or the standing of a commercial vehicle upon a street without an operator in the driver's seat, or the standing of a commercial vehicle upon a street without an operator in the driver's seat

1 for the purpose of loading and unloading of merchandise, material or goods of any nature, but only
for the reasonable length of time that is actually required to effect such loading or unloading.

3 *Stop intersection* means an intersection at one or more entrances to which vehicles are
required by stop signs to stop before entering.

5 *Stopping* means the stopping of a vehicle to load or unload passengers for a period not to
exceed three (3) minutes, with the operator remaining in the driver's seat.

7 *Street or highway* means the entire width between the boundary lines of every publically
maintained way when any part thereof is open to public use for purposes of vehicular travel.

9 *Taxicab* means a chauffeur-driven motor vehicle that is equipped with a taximeter, a roof
light, and a partition between the front and back seats, and is designed to have seating capacity for
11 six (6) persons including the driver and is operated at timed rates established in accordance with
section 58-2-6 of this Code.

13 *Through street* means a street or portion at the entrances of which vehicles from intersecting
streets are required, by standing stop signs, to stop before entering or crossing.

15 *Traffic-control devices* means all signs, signals, markings and devices placed or erected by
authorities of a public body which, or of an official who, has jurisdiction for the purpose of
17 regulating, warning, protecting, or guiding traffic.

19 *Traffic-control signal* means any device, whether manually, electrically or mechanically
operated, by which traffic is directed alternatively to stop and to proceed.

21 *Trailer* means every vehicle, with or without motive power, other than a pole-trailer, which
is designed for carrying property or persons and for being drawn by a motor vehicle, and is so
constructed that no part of its weights rests upon the towing vehicle.

1 *Trailer coach* means a vehicle designed and used primarily as temporary living quarters for recreational, camping, or travel purposes, that is drawn by another vehicle.

3 *Truck* means every motor vehicle that is designed, used or maintained primarily for the transportation of property.

5 *Truck tractor* means every motor vehicle that is designed and is used primarily for drawing other vehicles and is not constructed so as to carry a load other than a part of the weight of the vehicle and load so drawn.

7 *Using a mobile telephone* means dialing, speaking into or listening to a mobile telephone whether hands-free or hand-held.

9 *Van* means a multipurpose, enclosed motor vehicle, other than a delivery truck or step van, that has a box-like shape, rear or side doors, and side panels, often with windows, that is used to transport property or persons.

11 *Vehicle* means every device in, upon, or by which any person or property is or may be transported or drawn upon a public highway, except devices exclusively moved by human power or used exclusively upon stationary rails or tracks.

13 *Wireless telephone service* means two-way real time voice telecommunications service that is interconnected to a public switched telephone network and is provided by a commercial mobile radio service.

1
ARTICLE IV. OPERATION OF VEHICLES

DIVISION 1. GENERALLY

3 Sec. 55-4-28 Use of a mobile telephone while operating a vehicle.

5 (a) It shall be unlawful for any person to operate a motor vehicle on a public highway while using a mobile telephone whether hands-free or hand-held to engage in a call while such vehicle is in motion.

7 (b) Subsection (a) shall not apply to the use of a mobile telephone for the sole purpose of communicating with any of the following regarding an emergency situation; a hospital, a physician's office; an ambulance company; a fire department; or a police department.

9 (c) Subsection (a) shall not apply to the use of a mobile telephone by any of the following persons while in the performance of their official duties; a police officer; a member of the fire department; or the operator of an authorized emergency vehicle as defined in this Chapter.

13 (d) A violation of this section shall be a civil infraction and is subject to fines not to exceed one-hundred (\$100.00) dollars and costs as determined by the Court.

15 (e) The burden of proof as to whether the operator of a motor vehicle was using a mobile telephone to engage in a call regarding an emergency situation lies with the defendant charged with a violation of this Chapter.

EXHIBIT 2
SB 814

SENATE BILL No. 814

October 18, 2005, Introduced by Senators PATTERSON, BASHAM, JELINEK, JACOBS and BRATER and referred to the Committee on Technology and Energy.

A bill to amend 1949 PA 300, entitled
"Michigan vehicle code,"
by amending sections 320a and 907 (MCL 257.320a and 257.907),
section 320a as amended by 2004 PA 495 and section 907 as amended
by 2005 PA 1, and by adding section 602b.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 320a. (1) Until October 1, 2005, within 10 days after the receipt of a properly prepared abstract from this state or another state, or, beginning October 1, 2005, within 5 days after the receipt of a properly prepared abstract from this state or another state, the secretary of state shall record the date of conviction, civil infraction determination, or probate court disposition, and the number of points for each, based on the following formula, except as otherwise provided in this section and section 629c:

(a) Manslaughter, negligent homicide, or a felony resulting from the operation of a motor vehicle, ORV, or snowmobile..... 6 points

(b) A violation of section 601b(2) or (3), 601c(1) or (2), or 653a(3) or (4)..... 6 points

(c) A violation of section 625(1), (4), (5), (7), or (8), section 81134 or 82127(1) of the natural resources and environmental protection act, 1994 PA 451, MCL 324.81134 and 324.82127, or a law or ordinance substantially corresponding to section 625(1), (4), (5), (7), or (8) or section 81134 or 82127(1) of the natural resources and environmental protection act, 1994 PA 451, MCL 324.81134 and 324.82127..... 6 points

(d) Failing to stop and disclose identity at the scene of an accident when required by law..... 6 points

(e) Operating a motor vehicle in violation of section 626..... 6 points

(f) Fleeing or eluding an officer..... 6 points

(g) A violation of section 627(9) pertaining to speed in a work zone described in that section by exceeding the lawful maximum by more than 15 miles per hour..... 5 points

(h) A violation of any law other than the law described in subdivision (g) or ordinance pertaining to speed by exceeding the lawful maximum by more than 15 miles per hour 4 points

(i) A violation of section 625(3) or (6), section 81135 or 82127(3) of the natural resources and environmental

protection act, 1994 PA 451, MCL 324.81135 and 324.82127,
or a law or ordinance substantially corresponding to
section 625(3) or (6) or section 81135 or 82127(3) of the
natural resources and environmental protection act, 1994
PA 451, MCL 324.81135 and 324.82127..... 4 points

(j) A violation of section 626a or a law or ordinance
substantially corresponding to section 626a..... 4 points

(k) A violation of section 653a(2)..... 4 points

(l) A violation of section 627(9) pertaining to speed
in a work zone described in that section by exceeding the
lawful maximum by more than 10 but not more than 15 miles
per hour..... 4 points

(m) A violation of any law other than the law described
in subdivision (l) or ordinance pertaining to speed by
exceeding the lawful maximum by more than 10 but not more
than 15 miles per hour or careless driving in violation
of section 626b or a law or ordinance substantially
corresponding to section 626b..... 3 points

(n) A violation of section 627(9) pertaining to speed
in a work zone described in that section by exceeding the
lawful maximum by 10 miles per hour or less..... 3 points

(o) A violation of any law other than the law described
in subdivision (n) or ordinance pertaining to speed by
exceeding the lawful maximum by 10 miles per hour or less... 2 points

(p) Disobeying a traffic signal or stop sign, or
improper passing..... 3 points

(q) A violation of section 624a, 624b, or a law or

This is our starting text

ordinance substantially corresponding to section 624a
or 624b..... 2 points

(r) A violation of section 310e(4) or (6) or a law or
ordinance substantially corresponding to section 310e(4)
or (6)..... 2 points

(s) All other moving violations pertaining to the
operation of motor vehicles reported under this section..... 2 points

(t) A refusal by a person less than 21 years of age to
submit to a preliminary breath test required by a peace
officer under section 625a..... 2 points

(2) THE SECRETARY OF STATE SHALL ADD 1 POINT TO EACH
CONVICTION, CIVIL INFRACTION DETERMINATION, OR PROBATE COURT
DISPOSITION IF THE CITATION INDICATES THAT THE USE OF A CELLULAR
TELEPHONE CONTRIBUTED TO THE CAUSE OF THE VIOLATION.

(3) ~~(2)~~ Points shall not be entered for a violation of
section 310e(14), 311, 625m, 658, 717, 719, 719a, or 723.

(4) ~~(3)~~ Points shall not be entered for bond forfeitures.

(5) ~~(4)~~ Points shall not be entered for overweight loads or
for defective equipment.

(6) ~~(5)~~ If more than 1 conviction, civil infraction
determination, or probate court disposition results from the same
incident, points shall be entered only for the violation that
receives the highest number of points under this section.

(7) ~~(6)~~ If a person has accumulated 9 points as provided in
this section, the secretary of state may call the person in for an
interview as to the person's driving ability and record after due
notice as to time and place of the interview. If the person fails

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to appear as provided in this subsection, the secretary of state shall add 3 points to the person's record.

(8) ~~(7)~~ If a person violates a speed restriction established by an executive order issued during a state of energy emergency as provided by 1982 PA 191, MCL 10.81 to 10.89, the secretary of state shall enter points for the violation pursuant to subsection (1).

(9) ~~(8)~~ The secretary of state shall enter 6 points upon the record of a person whose license is suspended or denied pursuant to section 625f. However, if a conviction, civil infraction determination, or probate court disposition results from the same incident, additional points for that offense shall not be entered.

(10) ~~(9)~~ If a Michigan driver commits a violation in another state that would be a civil infraction if committed in Michigan, and a conviction results solely because of the failure of the Michigan driver to appear in that state to contest the violation, upon receipt of the abstract of conviction by the secretary of state, the violation shall be noted on the driver's record, but no points shall be assessed against his or her driver's license.

SEC. 602B. (1) AN INDIVIDUAL WHO IS ISSUED A TEMPORARY INSTRUCTION PERMIT OR A LEVEL 1 OR 2 GRADUATED LICENSING STATUS TO OPERATE A MOTOR VEHICLE SHALL NOT, WHILE OPERATING A MOTOR VEHICLE, USE A HANDHELD CELLULAR TELEPHONE.

(2) AN INDIVIDUAL WHO VIOLATES SUBSECTION (1) IS RESPONSIBLE FOR A CIVIL INFRACTION.

(3) NOT LATER THAN OCTOBER 1, 2005, THE DEPARTMENT OF STATE POLICE SHALL REPORT TO THE SENATE AND HOUSE STANDING COMMITTEES ON TRANSPORTATION CONCERNING WHETHER IN THE INTEREST OF PUBLIC SAFETY

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IT WOULD BE ADVISABLE TO LIMIT DRIVERS TO THE USE OF HANDS-FREE MODELS OF CELLULAR TELEPHONES WHILE OPERATING A MOTOR VEHICLE ON THE HIGHWAYS OF THIS STATE.

Sec. 907. (1) A violation of this act, or a local ordinance substantially corresponding to a provision of this act, that is designated a civil infraction shall not be considered a lesser included offense of a criminal offense.

(2) If a person is determined pursuant to sections 741 to 750 to be responsible or responsible "with explanation" for a civil infraction under this act or a local ordinance substantially corresponding to a provision of this act, the judge or district court magistrate may order the person to pay a civil fine of not more than \$100.00 and costs as provided in subsection (4). HOWEVER, IF IT IS DETERMINED THAT THE USE OF A CELLULAR TELEPHONE CONTRIBUTED TO THE CAUSE OF THE VIOLATION, THE CIVIL FINE ORDERED UNDER THIS SECTION SHALL BE INCREASED BY \$25.00. However, for a violation of section 674(1)(s) or a local ordinance substantially corresponding to section 674(1)(s), the person shall be ordered to pay costs as provided in subsection (4) and a civil fine of not less than \$100.00 or more than \$250.00. For a violation of section 328, the civil fine ordered under this subsection shall be not more than \$50.00. For a violation of section 710d, the civil fine ordered under this subsection shall not exceed \$10.00. For a violation of section 710e, the civil fine and court costs ordered under this subsection shall be \$25.00. For a violation of section 682 or a local ordinance substantially corresponding to section 682, the person shall be ordered to pay costs as provided in

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subsection (4) and a civil fine of not less than \$100.00 or more than \$500.00. For a violation of section 240, the civil fine ordered under this subsection shall be \$15.00. For a violation of section 252a(1), the civil fine ordered under this subsection shall be \$50.00. For a violation of section 676a(3), the civil fine ordered under this section shall be not more than \$10.00.

Permission may be granted for payment of a civil fine and costs to be made within a specified period of time or in specified installments, but unless permission is included in the order or judgment, the civil fine and costs shall be payable immediately.

(3) Except as provided in this subsection, if a person is determined to be responsible or responsible "with explanation" for a civil infraction under this act or a local ordinance substantially corresponding to a provision of this act while driving a commercial motor vehicle, he or she shall be ordered to pay costs as provided in subsection (4) and a civil fine of not more than \$250.00. If a person is determined to be responsible or responsible "with explanation" for a civil infraction under section 319g or a local ordinance substantially corresponding to section 319g, that person shall be ordered to pay costs as provided in subsection (4) and a civil fine of not more than \$10,000.00.

(4) If a civil fine is ordered under subsection (2) or (3), the judge or district court magistrate shall summarily tax and determine the costs of the action, which are not limited to the costs taxable in ordinary civil actions, and may include all expenses, direct and indirect, to which the plaintiff has been put in connection with the civil infraction, up to the entry of

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judgment. Costs shall not be ordered in excess of \$100.00. A civil fine ordered under subsection (2) or (3) shall not be waived unless costs ordered under this subsection are waived. Except as otherwise provided by law, costs are payable to the general fund of the plaintiff.

(5) In addition to a civil fine and costs ordered under subsection (2) or (3) and subsection (4) and the justice system assessment ordered under subsection (14), the judge or district court magistrate may order the person to attend and complete a program of treatment, education, or rehabilitation.

(6) A district court magistrate shall impose the sanctions permitted under subsections (2), (3), and (5) only to the extent expressly authorized by the chief judge or only judge of the district court district.

(7) Each district of the district court and each municipal court may establish a schedule of civil fines, costs, and assessments to be imposed for civil infractions that occur within the respective district or city. If a schedule is established, it shall be prominently posted and readily available for public inspection. A schedule need not include all violations that are designated by law or ordinance as civil infractions. A schedule may exclude cases on the basis of a defendant's prior record of civil infractions or traffic offenses, or a combination of civil infractions and traffic offenses.

(8) The state court administrator shall annually publish and distribute to each district and court a recommended range of civil fines and costs for first-time civil infractions. This

recommendation is not binding upon the courts having jurisdiction over civil infractions but is intended to act as a normative guide for judges and district court magistrates and a basis for public evaluation of disparities in the imposition of civil fines and costs throughout the state.

(9) If a person has received a civil infraction citation for defective safety equipment on a vehicle under section 683, the court shall waive a civil fine, costs, and assessments upon receipt of certification by a law enforcement agency that repair of the defective equipment was made before the appearance date on the citation.

(10) A default in the payment of a civil fine or costs ordered under subsection (2), (3), or (4) or a justice system assessment ordered under subsection (14), or an installment of the fine, costs, or assessment, may be collected by a means authorized for the enforcement of a judgment under chapter 40 of the revised judicature act of 1961, 1961 PA 236, MCL 600.4001 to 600.4065, or under chapter 60 of the revised judicature act of 1961, 1961 PA 236, MCL 600.6001 to 600.6098.

(11) If a person fails to comply with an order or judgment issued pursuant to this section within the time prescribed by the court, the driver's license of that person shall be suspended pursuant to section 321a until full compliance with that order or judgment occurs. In addition to this suspension, the court may also proceed under section 908.

(12) The court shall waive any civil fine, cost, or assessment against a person who received a civil infraction citation for a

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violation of section 710d if the person, before the appearance date on the citation, supplies the court with evidence of acquisition, purchase, or rental of a child seating system meeting the requirements of section 710d.

(13) Until October 1, 2003, in addition to any civil fines and costs ordered to be paid under this section, the judge or district court magistrate shall levy an assessment of \$5.00 for each civil infraction determination, except for a parking violation or a violation for which the total fine and costs imposed are \$10.00 or less. An assessment paid before October 1, 2003 shall be transmitted by the clerk of the court to the state treasurer to be deposited into the Michigan justice training fund. An assessment ordered before October 1, 2003 but collected on or after October 1, 2003 shall be transmitted by the clerk of the court to the state treasurer for deposit in the justice system fund created in section 181 of the revised judicature act of 1961, 1961 PA 236, MCL 600.181. An assessment levied under this subsection is not a civil fine for purposes of section 909.

(14) Effective October 1, 2003, in addition to any civil fines or costs ordered to be paid under this section, the judge or district court magistrate shall order the defendant to pay a justice system assessment of \$40.00 for each civil infraction determination, except for a parking violation or a violation for which the total fine and costs imposed are \$10.00 or less. Upon payment of the assessment, the clerk of the court shall transmit the assessment collected to the state treasury to be deposited into the justice system fund created in section 181 of the revised

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judicature act of 1961, 1961 PA 236, MCL 600.181. An assessment levied under this subsection is not a civil fine for purposes of section 909.

(15) If a person has received a citation for a violation of section 223, the court shall waive any civil fine, costs, and assessment, upon receipt of certification by a law enforcement agency that the person, before the appearance date on the citation, produced a valid registration certificate that was valid on the date the violation of section 223 occurred.

(16) If a person has received a citation for a violation of section 328(1) for failing to produce a certificate of insurance pursuant to section 328(2), the court may waive the fee described in section 328(3)(c) and shall waive any fine, costs, and any other fee or assessment otherwise authorized under this act upon receipt of verification by the court that the person, before the appearance date on the citation, produced valid proof of insurance that was in effect at the time the violation of section 328(1) occurred. Insurance obtained subsequent to the time of the violation does not make the person eligible for a waiver under this subsection.

(17) THE SECRETARY OF STATE, IN CONJUNCTION WITH THE DEPARTMENT OF STATE POLICE, SHALL REPORT TO THE SENATE AND HOUSE STANDING COMMITTEES ON TRANSPORTATION 2 YEARS AFTER THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS SUBSECTION ON THE NUMBER OF CASES IN WHICH A CELLULAR TELEPHONE CONTRIBUTED TO A VIOLATION OF THIS ACT FOR WHICH A FINE WAS IMPOSED UNDER THIS SECTION.

EXHIBIT 3
HB 5483

HOUSE BILL No. 5483

December 6, 2005, Introduced by Reps. Pearce, Jones, Ball, Schuitmaker, Accavitti, LaJoy, Kooiman, Hildenbrand, Gaffney, Mortimer and David Law and referred to the Committee on Judiciary.

A bill to amend 1949 PA 300, entitled
"Michigan vehicle code,"
by amending sections 320a and 907 (MCL 257.320a and 257.907),
section 320a as amended by 2004 PA 495 and section 907 as amended
by 2005 PA 1, and by adding section 602b.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 320a. (1) Until October 1, 2005, within 10 days after the receipt of a properly prepared abstract from this state or another state, or, beginning October 1, 2005, within 5 days after the receipt of a properly prepared abstract from this state or another state, the secretary of state shall record the date of conviction, civil infraction determination, or probate court disposition, and the number of points for each, based on the following formula, except as otherwise provided in this section and section 629c:

(a) Manslaughter, negligent homicide, or a felony resulting from the operation of a motor vehicle, ORV, or snowmobile..... 6 points

(b) A violation of section 601b(2) or (3), 601c(1) or (2), or 653a(3) or (4)..... 6 points

(c) A violation of section 625(1), (4), (5), (7), or (8), section 81134 or 82127(1) of the natural resources and environmental protection act, 1994 PA 451, MCL 324.81134 and 324.82127, or a law or ordinance substantially corresponding to section 625(1), (4), (5), (7), or (8) or section 81134 or 82127(1) of the natural resources and environmental protection act, 1994 PA 451, MCL 324.81134 and 324.82127..... 6 points

(d) Failing to stop and disclose identity at the scene of an accident when required by law..... 6 points

(e) Operating a motor vehicle in violation of section 626..... 6 points

(f) Fleeing or eluding an officer..... 6 points

(g) A violation of section 627(9) pertaining to speed in a work zone described in that section by exceeding the lawful maximum by more than 15 miles per hour..... 5 points

(h) A violation of any law other than the law described in subdivision (g) or ordinance pertaining to speed by exceeding the lawful maximum by more than 15 miles per hour 4 points

(i) A violation of section 625(3) or (6), section 81135 or 82127(3) of the natural resources and environmental

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protection act, 1994 PA 451, MCL 324.81135 and 324.82127,
or a law or ordinance substantially corresponding to
section 625(3) or (6) or section 81135 or 82127(3) of the
natural resources and environmental protection act, 1994
PA 451, MCL 324.81135 and 324.82127..... 4 points

(j) A violation of section 626a or a law or ordinance
substantially corresponding to section 626a..... 4 points

(k) A violation of section 653a(2)..... 4 points

(l) A violation of section 627(9) pertaining to speed
in a work zone described in that section by exceeding the
lawful maximum by more than 10 but not more than 15 miles
per hour..... 4 points

(m) A violation of any law other than the law described
in subdivision (l) or ordinance pertaining to speed by
exceeding the lawful maximum by more than 10 but not more
than 15 miles per hour or careless driving in violation
of section 626b or a law or ordinance substantially
corresponding to section 626b..... 3 points

(n) A violation of section 627(9) pertaining to speed
in a work zone described in that section by exceeding the
lawful maximum by 10 miles per hour or less..... 3 points

(o) A violation of any law other than the law described
in subdivision (n) or ordinance pertaining to speed by
exceeding the lawful maximum by 10 miles per hour or less... 2 points

(p) Disobeying a traffic signal or stop sign, or
improper passing..... 3 points

(q) A violation of section 624a, 624b, or a law or

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ordinance substantially corresponding to section 624a

or 624b..... 2 points

(r) A violation of section 310e(4) or (6) or a law or ordinance substantially corresponding to section 310e(4)

or (6)..... 2 points

(s) All other moving violations pertaining to the operation of motor vehicles reported under this section..... 2 points

(t) A refusal by a person less than 21 years of age to submit to a preliminary breath test required by a peace officer under section 625a..... 2 points

(2) THE SECRETARY OF STATE SHALL ADD 1 POINT TO EACH CONVICTION, CIVIL INFRACTION DETERMINATION, OR PROBATE COURT DISPOSITION IF THE CITATION INDICATES THAT THE USE OF A CELLULAR TELEPHONE CONTRIBUTED TO THE CAUSE OF THE VIOLATION.

(3) ~~(2)~~ Points shall not be entered for a violation of section 310e(14), 311, 625m, 658, 717, 719, 719a, or 723.

(4) ~~(3)~~ Points shall not be entered for bond forfeitures.

(5) ~~(4)~~ Points shall not be entered for overweight loads or for defective equipment.

(6) ~~(5)~~ If more than 1 conviction, civil infraction determination, or probate court disposition results from the same incident, points shall be entered only for the violation that receives the highest number of points under this section.

(7) ~~(6)~~ If a person has accumulated 9 points as provided in this section, the secretary of state may call the person in for an interview as to the person's driving ability and record after due notice as to time and place of the interview. If the person fails

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to appear as provided in this subsection, the secretary of state shall add 3 points to the person's record.

(8) ~~(7)~~ If a person violates a speed restriction established by an executive order issued during a state of energy emergency as provided by 1982 PA 191, MCL 10.81 to 10.89, the secretary of state shall enter points for the violation pursuant to subsection (1).

(9) ~~(8)~~ The secretary of state shall enter 6 points upon the record of a person whose license is suspended or denied pursuant to section 625f. However, if a conviction, civil infraction determination, or probate court disposition results from the same incident, additional points for that offense shall not be entered.

(10) ~~(9)~~ If a Michigan driver commits a violation in another state that would be a civil infraction if committed in Michigan, and a conviction results solely because of the failure of the Michigan driver to appear in that state to contest the violation, upon receipt of the abstract of conviction by the secretary of state, the violation shall be noted on the driver's record, but no points shall be assessed against his or her driver's license.

SEC. 602B. (1) AN INDIVIDUAL WHO IS ISSUED A TEMPORARY INSTRUCTION PERMIT OR A LEVEL 1 OR 2 GRADUATED LICENSING STATUS TO OPERATE A MOTOR VEHICLE SHALL NOT, WHILE OPERATING A MOTOR VEHICLE, USE A HANDHELD CELLULAR TELEPHONE.

(2) AN INDIVIDUAL WHO VIOLATES SUBSECTION (1) IS RESPONSIBLE FOR A CIVIL INFRACTION.

(3) NOT LATER THAN OCTOBER 1, 2005, THE DEPARTMENT OF STATE POLICE SHALL REPORT TO THE SENATE AND HOUSE STANDING COMMITTEES ON TRANSPORTATION CONCERNING WHETHER IN THE INTEREST OF PUBLIC SAFETY

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IT WOULD BE ADVISABLE TO LIMIT DRIVERS TO THE USE OF HANDS-FREE MODELS OF CELLULAR TELEPHONES WHILE OPERATING A MOTOR VEHICLE ON THE HIGHWAYS OF THIS STATE.

Sec. 907. (1) A violation of this act, or a local ordinance substantially corresponding to a provision of this act, that is designated a civil infraction shall not be considered a lesser included offense of a criminal offense.

(2) If a person is determined pursuant to sections 741 to 750 to be responsible or responsible "with explanation" for a civil infraction under this act or a local ordinance substantially corresponding to a provision of this act, the judge or district court magistrate may order the person to pay a civil fine of not more than \$100.00 and costs as provided in subsection (4). HOWEVER, IF IT IS DETERMINED THAT THE USE OF A CELLULAR TELEPHONE CONTRIBUTED TO THE CAUSE OF THE VIOLATION, THE CIVIL FINE ORDERED UNDER THIS SECTION SHALL BE INCREASED BY \$25.00. However, for a violation of section 674(1)(s) or a local ordinance substantially corresponding to section 674(1)(s), the person shall be ordered to pay costs as provided in subsection (4) and a civil fine of not less than \$100.00 or more than \$250.00. For a violation of section 328, the civil fine ordered under this subsection shall be not more than \$50.00. For a violation of section 710d, the civil fine ordered under this subsection shall not exceed \$10.00. For a violation of section 710e, the civil fine and court costs ordered under this subsection shall be \$25.00. For a violation of section 682 or a local ordinance substantially corresponding to section 682, the person shall be ordered to pay costs as provided in

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subsection (4) and a civil fine of not less than \$100.00 or more than \$500.00. For a violation of section 240, the civil fine ordered under this subsection shall be \$15.00. For a violation of section 252a(1), the civil fine ordered under this subsection shall be \$50.00. For a violation of section 676a(3), the civil fine ordered under this section shall be not more than \$10.00.

Permission may be granted for payment of a civil fine and costs to be made within a specified period of time or in specified installments, but unless permission is included in the order or judgment, the civil fine and costs shall be payable immediately.

(3) Except as provided in this subsection, if a person is determined to be responsible or responsible "with explanation" for a civil infraction under this act or a local ordinance substantially corresponding to a provision of this act while driving a commercial motor vehicle, he or she shall be ordered to pay costs as provided in subsection (4) and a civil fine of not more than \$250.00. If a person is determined to be responsible or responsible "with explanation" for a civil infraction under section 319g or a local ordinance substantially corresponding to section 319g, that person shall be ordered to pay costs as provided in subsection (4) and a civil fine of not more than \$10,000.00.

(4) If a civil fine is ordered under subsection (2) or (3), the judge or district court magistrate shall summarily tax and determine the costs of the action, which are not limited to the costs taxable in ordinary civil actions, and may include all expenses, direct and indirect, to which the plaintiff has been put in connection with the civil infraction, up to the entry of

judgment. Costs shall not be ordered in excess of \$100.00. A civil fine ordered under subsection (2) or (3) shall not be waived unless costs ordered under this subsection are waived. Except as otherwise provided by law, costs are payable to the general fund of the plaintiff.

(5) In addition to a civil fine and costs ordered under subsection (2) or (3) and subsection (4) and the justice system assessment ordered under subsection (14), the judge or district court magistrate may order the person to attend and complete a program of treatment, education, or rehabilitation.

(6) A district court magistrate shall impose the sanctions permitted under subsections (2), (3), and (5) only to the extent expressly authorized by the chief judge or only judge of the district court district.

(7) Each district of the district court and each municipal court may establish a schedule of civil fines, costs, and assessments to be imposed for civil infractions that occur within the respective district or city. If a schedule is established, it shall be prominently posted and readily available for public inspection. A schedule need not include all violations that are designated by law or ordinance as civil infractions. A schedule may exclude cases on the basis of a defendant's prior record of civil infractions or traffic offenses, or a combination of civil infractions and traffic offenses.

(8) The state court administrator shall annually publish and distribute to each district and court a recommended range of civil fines and costs for first-time civil infractions. This

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recommendation is not binding upon the courts having jurisdiction over civil infractions but is intended to act as a normative guide for judges and district court magistrates and a basis for public evaluation of disparities in the imposition of civil fines and costs throughout the state.

(9) If a person has received a civil infraction citation for defective safety equipment on a vehicle under section 683, the court shall waive a civil fine, costs, and assessments upon receipt of certification by a law enforcement agency that repair of the defective equipment was made before the appearance date on the citation.

(10) A default in the payment of a civil fine or costs ordered under subsection (2), (3), or (4) or a justice system assessment ordered under subsection (14), or an installment of the fine, costs, or assessment, may be collected by a means authorized for the enforcement of a judgment under chapter 40 of the revised judicature act of 1961, 1961 PA 236, MCL 600.4001 to 600.4065, or under chapter 60 of the revised judicature act of 1961, 1961 PA 236, MCL 600.6001 to 600.6098.

(11) If a person fails to comply with an order or judgment issued pursuant to this section within the time prescribed by the court, the driver's license of that person shall be suspended pursuant to section 321a until full compliance with that order or judgment occurs. In addition to this suspension, the court may also proceed under section 908.

(12) The court shall waive any civil fine, cost, or assessment against a person who received a civil infraction citation for a

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violation of section 710d if the person, before the appearance date on the citation, supplies the court with evidence of acquisition, purchase, or rental of a child seating system meeting the requirements of section 710d.

(13) Until October 1, 2003, in addition to any civil fines and costs ordered to be paid under this section, the judge or district court magistrate shall levy an assessment of \$5.00 for each civil infraction determination, except for a parking violation or a violation for which the total fine and costs imposed are \$10.00 or less. An assessment paid before October 1, 2003 shall be transmitted by the clerk of the court to the state treasurer to be deposited into the Michigan justice training fund. An assessment ordered before October 1, 2003 but collected on or after October 1, 2003 shall be transmitted by the clerk of the court to the state treasurer for deposit in the justice system fund created in section 181 of the revised judicature act of 1961, 1961 PA 236, MCL 600.181. An assessment levied under this subsection is not a civil fine for purposes of section 909.

(14) Effective October 1, 2003, in addition to any civil fines or costs ordered to be paid under this section, the judge or district court magistrate shall order the defendant to pay a justice system assessment of \$40.00 for each civil infraction determination, except for a parking violation or a violation for which the total fine and costs imposed are \$10.00 or less. Upon payment of the assessment, the clerk of the court shall transmit the assessment collected to the state treasury to be deposited into the justice system fund created in section 181 of the revised

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judicature act of 1961, 1961 PA 236, MCL 600.181. An assessment levied under this subsection is not a civil fine for purposes of section 909.

(15) If a person has received a citation for a violation of section 223, the court shall waive any civil fine, costs, and assessment, upon receipt of certification by a law enforcement agency that the person, before the appearance date on the citation, produced a valid registration certificate that was valid on the date the violation of section 223 occurred.

(16) If a person has received a citation for a violation of section 328(1) for failing to produce a certificate of insurance pursuant to section 328(2), the court may waive the fee described in section 328(3)(c) and shall waive any fine, costs, and any other fee or assessment otherwise authorized under this act upon receipt of verification by the court that the person, before the appearance date on the citation, produced valid proof of insurance that was in effect at the time the violation of section 328(1) occurred. Insurance obtained subsequent to the time of the violation does not make the person eligible for a waiver under this subsection.

(17) THE SECRETARY OF STATE, IN CONJUNCTION WITH THE DEPARTMENT OF STATE POLICE, SHALL REPORT TO THE SENATE AND HOUSE STANDING COMMITTEES ON TRANSPORTATION 2 YEARS AFTER THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS SUBSECTION ON THE NUMBER OF CASES IN WHICH A CELLULAR TELEPHONE CONTRIBUTED TO A VIOLATION OF THIS ACT FOR WHICH A FINE WAS IMPOSED UNDER THIS SECTION.

EXHIBIT 4
HB 5053

HOUSE BILL No. 5053

July 13, 2005, Introduced by Rep. Stewart and referred to the Committee on Transportation.

A bill to amend 1949 PA 300, entitled
"Michigan vehicle code,"
(MCL 257.1 to 257.923) by adding section 677b.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

SEC. 677B. (1) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, A
PERSON SHALL NOT OPERATE A MOTOR VEHICLE ON A PUBLIC HIGHWAY WHILE
USING ANY TYPE OF HANDHELD CELLULAR OR OTHER HANDHELD MOBILE
TELECOMMUNICATION DEVICE.

(2) A PERSON MAY USE A HANDHELD TELECOMMUNICATION DEVICE WHILE
OPERATING A MOTOR VEHICLE ON A PUBLIC HIGHWAY UNDER ANY OF THE
FOLLOWING CIRCUMSTANCES:

(A) BY MEANS OF A HANDS-FREE FEATURE OR FUNCTION.

(B) IF THE MOTOR VEHICLE IS NOT IN MOTION AND THE MOTOR IS NOT
ENGAGED.

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(C) IN AN IMMEDIATE HEALTH OR SAFETY EMERGENCY TO OBTAIN HELP OR NOTIFY AUTHORITIES.

(3) AN OPERATOR OF A MOTOR VEHICLE CREATES A REBUTTABLE PRESUMPTION THAT THE OPERATOR IS USING A TELECOMMUNICATION DEVICE BY HOLDING IT NEAR HIS OR HER EAR. THE PRESUMPTION IS REBUTTABLE BY EVIDENCE TENDING TO SHOW THAT THE OPERATOR WAS NOT OPERATING THE TELECOMMUNICATION DEVICE.

EXHIBIT 5
HB 5133

HB-5133, As Passed House, October 20, 2005

SUBSTITUTE FOR
HOUSE BILL NO. 5133

A bill to amend 1949 PA 300, entitled
"Michigan vehicle code,"
by amending sections 605 and 907 (MCL 257.605 and 257.907), section
605 as amended by 2000 PA 97 and section 907 as amended by 2005 PA
1, and by adding section 602b.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

SEC. 602B. (1) AN INDIVIDUAL WHO IS LESS THAN 18 YEARS OF AGE
SHALL NOT OPERATE A MOTOR VEHICLE WHILE USING AN INTERACTIVE
WIRELESS COMMUNICATION DEVICE, EXCEPT IN AN EMERGENCY.

(2) AN INDIVIDUAL WHO VIOLATES THIS SECTION IS RESPONSIBLE FOR
A CIVIL INFRACTION.

Sec. 605. (1) This chapter and chapter VIII apply uniformly
throughout this state and in all political subdivisions and
municipalities in the state. A local authority shall not adopt,

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enact, or enforce a local law that provides lesser penalties, OR THAT EXPANDS SECTION 602B, or that is otherwise in conflict with this chapter or chapter VIII.

(2) A local law or portion of a local law that imposes a criminal penalty for an act or omission that is a civil infraction under this act, or that imposes a criminal penalty or civil sanction in excess of that prescribed in this act, is in conflict with this act and is void to the extent of the conflict.

(3) Except for a case in which the citation is dismissed pursuant to subsection (4), proceeds of a civil fine imposed by a local authority for violation of a local law regulating the operation of a commercial motor vehicle and substantially corresponding to a provision of this act shall be paid to the county treasurer and allocated as follows:

(a) Seventy percent to the local unit of government in which the citation is issued.

(b) Thirty percent for library purposes as provided by law.

(4) The owner or operator of a commercial motor vehicle shall not be issued more than 1 citation for each violation of a code or ordinance regulating the operation of a commercial motor vehicle and substantially corresponding to a provision of sections 683 to 725a of the Michigan vehicle code, 1949 PA 300, MCL 257.683 to 257.725a, within a 24-hour period. If the owner or operator of a commercial motor vehicle is issued a citation for an equipment violation pursuant to section 683 that does not result in the vehicle being placed out of service, the court shall dismiss the citation if the owner or operator of that commercial motor vehicle

provides written proof to the court within 14 days after the citation is issued showing that the defective equipment indicated in the citation has been repaired.

(5) As used in this section:

(a) "Local law" includes a local charter provision, ordinance, rule, or regulation.

(b) "Out of service" means that process established under the motor carrier safety act, 1963 PA 181, MCL 480.11 to 480.22.

Sec. 907. (1) A violation of this act, or a local ordinance substantially corresponding to a provision of this act, that is designated a civil infraction shall not be considered a lesser included offense of a criminal offense.

(2) If a person is determined pursuant to sections 741 to 750 to be responsible or responsible "with explanation" for a civil infraction under this act or a local ordinance substantially corresponding to a provision of this act, the judge or district court magistrate may order the person to pay a civil fine of not more than \$100.00 and costs as provided in subsection (4). However, for a violation of section 674(1)(s) or a local ordinance substantially corresponding to section 674(1)(s), the person shall be ordered to pay costs as provided in subsection (4) and a civil fine of not less than \$100.00 or more than \$250.00. For a violation of section 328, the civil fine ordered under this subsection shall be not more than \$50.00. For a violation of section 710d, the civil fine ordered under this subsection shall not exceed \$10.00. For a violation of section 710e, the civil fine and court costs ordered under this subsection shall be \$25.00. For a violation of section

682 or a local ordinance substantially corresponding to section 682, the person shall be ordered to pay costs as provided in subsection (4) and a civil fine of not less than \$100.00 or more than \$500.00. For a violation of section 240, the civil fine ordered under this subsection shall be \$15.00. For a violation of section 252a(1), the civil fine ordered under this subsection shall be \$50.00. **FOR A VIOLATION OF SECTION 602B, THE CIVIL FINE ORDERED UNDER THIS SUBSECTION SHALL BE \$50.00.** For a violation of section 676a(3), the civil fine ordered under this section shall be not more than \$10.00. Permission may be granted for payment of a civil fine and costs to be made within a specified period of time or in specified installments, but unless permission is included in the order or judgment, the civil fine and costs shall be payable immediately.

(3) Except as provided in this subsection, if a person is determined to be responsible or responsible "with explanation" for a civil infraction under this act or a local ordinance substantially corresponding to a provision of this act while driving a commercial motor vehicle, he or she shall be ordered to pay costs as provided in subsection (4) and a civil fine of not more than \$250.00. If a person is determined to be responsible or responsible "with explanation" for a civil infraction under section 319g or a local ordinance substantially corresponding to section 319g, that person shall be ordered to pay costs as provided in subsection (4) and a civil fine of not more than \$10,000.00.

(4) If a civil fine is ordered under subsection (2) or (3), the judge or district court magistrate shall summarily tax and

determine the costs of the action, which are not limited to the costs taxable in ordinary civil actions, and may include all expenses, direct and indirect, to which the plaintiff has been put in connection with the civil infraction, up to the entry of judgment. Costs shall not be ordered in excess of \$100.00. A civil fine ordered under subsection (2) or (3) shall not be waived unless costs ordered under this subsection are waived. Except as otherwise provided by law, costs are payable to the general fund of the plaintiff.

(5) In addition to a civil fine and costs ordered under subsection (2) or (3) and subsection (4) and the justice system assessment ordered under subsection (14), the judge or district court magistrate may order the person to attend and complete a program of treatment, education, or rehabilitation.

(6) A district court magistrate shall impose the sanctions permitted under subsections (2), (3), and (5) only to the extent expressly authorized by the chief judge or only judge of the district court district.

(7) Each district of the district court and each municipal court may establish a schedule of civil fines, costs, and assessments to be imposed for civil infractions that occur within the respective district or city. If a schedule is established, it shall be prominently posted and readily available for public inspection. A schedule need not include all violations that are designated by law or ordinance as civil infractions. A schedule may exclude cases on the basis of a defendant's prior record of civil infractions or traffic offenses, or a combination of civil

This is our starting text

infractions and traffic offenses.

(8) The state court administrator shall annually publish and distribute to each district and court a recommended range of civil fines and costs for first-time civil infractions. This recommendation is not binding upon the courts having jurisdiction over civil infractions but is intended to act as a normative guide for judges and district court magistrates and a basis for public evaluation of disparities in the imposition of civil fines and costs throughout the state.

(9) If a person has received a civil infraction citation for defective safety equipment on a vehicle under section 683, the court shall waive a civil fine, costs, and assessments upon receipt of certification by a law enforcement agency that repair of the defective equipment was made before the appearance date on the citation.

(10) A default in the payment of a civil fine or costs ordered under subsection (2), (3), or (4) or a justice system assessment ordered under subsection (14), or an installment of the fine, costs, or assessment, may be collected by a means authorized for the enforcement of a judgment under chapter 40 of the revised judicature act of 1961, 1961 PA 236, MCL 600.4001 to 600.4065, or under chapter 60 of the revised judicature act of 1961, 1961 PA 236, MCL 600.6001 to 600.6098.

(11) If a person fails to comply with an order or judgment issued pursuant to this section within the time prescribed by the court, the driver's license of that person shall be suspended pursuant to section 321a until full compliance with that order or

judgment occurs. In addition to this suspension, the court may also proceed under section 908.

(12) The court shall waive any civil fine, cost, or assessment against a person who received a civil infraction citation for a violation of section 710d if the person, before the appearance date on the citation, supplies the court with evidence of acquisition, purchase, or rental of a child seating system meeting the requirements of section 710d.

(13) Until October 1, 2003, in addition to any civil fines and costs ordered to be paid under this section, the judge or district court magistrate shall levy an assessment of \$5.00 for each civil infraction determination, except for a parking violation or a violation for which the total fine and costs imposed are \$10.00 or less. An assessment paid before October 1, 2003 shall be transmitted by the clerk of the court to the state treasurer to be deposited into the Michigan justice training fund. An assessment ordered before October 1, 2003 but collected on or after October 1, 2003 shall be transmitted by the clerk of the court to the state treasurer for deposit in the justice system fund created in section 181 of the revised judicature act of 1961, 1961 PA 236, MCL 600.181. An assessment levied under this subsection is not a civil fine for purposes of section 909.

(14) Effective October 1, 2003, in addition to any civil fines or costs ordered to be paid under this section, the judge or district court magistrate shall order the defendant to pay a justice system assessment of \$40.00 for each civil infraction determination, except for a parking violation or a violation for

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House Bill No. 5133 (H-2) as amended October 19, 2005
which the total fine and costs imposed are \$10.00 or less. Upon
payment of the assessment, the clerk of the court shall transmit
the assessment collected to the state treasury to be deposited into
the justice system fund created in section 181 of the revised
judicature act of 1961, 1961 PA 236, MCL 600.181. An assessment
levied under this subsection is not a civil fine for purposes of
section 909.

(15) If a person has received a citation for a violation of
section 223, the court shall waive any civil fine, costs, and
assessment, upon receipt of certification by a law enforcement
agency that the person, before the appearance date on the citation,
produced a valid registration certificate that was valid on the
date the violation of section 223 occurred.

(16) If a person has received a citation for a violation of
section 328(1) for failing to produce a certificate of insurance
pursuant to section 328(2), the court may waive the fee described
in section 328(3)(c) and shall waive any fine, costs, and any other
fee or assessment otherwise authorized under this act upon receipt
of verification by the court that the person, before the appearance
date on the citation, produced valid proof of insurance that was in
effect at the time the violation of section 328(1) occurred.

Insurance obtained subsequent to the time of the violation does not
make the person eligible for a waiver under this subsection.

[Enacting section 1. This amendatory act takes effect 90 days after
the date it is enacted.]

EXHIBIT 6
NATIONAL CONFERENCE OF STATE LEGISLATURES SURVEY



Cell Phones and Highway Safety: 2005 State Legislative Update

Appendix A. Existing State Laws Regarding Mobile Phone Use while Driving

State or Jurisdiction	Provision	Statute or Rule	Penalties
Arizona	Administrative Code provision prohibits school bus drivers from using a mobile phone while operating the school bus.	A.A.C. Title 17 Chapter 9, Art. 1 R17-9-104	No penalty specified.
Arkansas	Prohibits the use of a cellular telephone while operating a school bus.	Ark. Stat. Ann. §6-19-120 (2004)	Unclassified misdemeanor; fine of \$100-\$250.
California	Requires that rental cars with embedded cell phone equipment contain written instructions on the safe use of the phone while driving.	California Vehicle Code §2890 (West 2004)	\$100 maximum for first violation; \$200 maximum for second violation; \$250 for third and subsequent violations committed within one year.
	Prohibits any person from driving a motor vehicle if a video monitor, or a video screen or any other similar device that displays a video signal is operating and is located forward of the driver's seat or is visible to the driver. Provides exceptions for emergency equipment.	2003 Cal. Stats., Chap. 303	No penalty specified.
Colorado	Makes driving a motor vehicle by a person holding a temporary instruction permit or a minor's instruction permit while using a cellular telephone or other mobile communication device a secondary traffic offense.	Colo. Rev. Stat. §42-4-239 (2005)	\$15 fine plus a \$2.60 surcharge.
Connecticut	Prohibits the use of hand-held phones while driving. Provides exceptions for emergency situations.	2005 Conn. Acts, P.A. 159 (Reg. Sess.)	\$100 fine unless proof that hands-free accessory purchased prior to imposition of fine.
	Prohibits the use of cell phones while operating a school bus.		Not more than \$100.
	Prohibits drivers with only a learner's permit from using a cell phone while driving.		Not more than \$100.
	Prohibits drivers from engaging in activities unrelated to the operation of a motor vehicle.		Not more than \$100 plus fine for moving violation.
Delaware	Establishes a task force to study and make findings and recommendations regarding driver distractions, including mobile telephone use.	2002 HCR 30	Not applicable.

	Prohibits school bus drivers from using a cell phone while operating a school bus. Provides exceptions for emergency situations.	Del. Code Ann. tit.21, §4176B (2005)	For a first offense, fines range from \$50 to \$100. For subsequent offenses, fines range from \$100 to \$200 and loss of school bus endorsement from license.
	Prohibits any minor with a level 1 learner's permit or a driver's education learner's permit from using a cell phone or similar device while operating a motor vehicle. Provides exceptions during emergency situations or where the permit holder has stopped the vehicle at a location off the lanes of travel.	Del. Code. Ann. tit. 21, §2710 (2005)	Young drivers are subject to the same penalties they would face if they were found to be a reckless or negligent driver of a motor vehicle or to have committed a serious moving traffic violation.
Florida	Requires that drivers who use a head-set with a mobile phone while driving must use a head-set that provides sound through one ear and allows surrounding sound to be heard with the other ear.	Fla. Stat. §316.304 (2005)	\$30 for each violation; non-moving violation.
	Requires distracted driver annual accident reports. Preempts local jurisdictions from enacting restrictive ordinances.	Fla. Stat. §316.0075 (2005)	Not applicable.
Illinois	Single-sided headset or earpiece is permitted with a mobile phone while driving.	2001 Ill. Laws, P.A. 92-0152.	No penalty specified.
	School bus drivers prohibited from using a mobile phone while driving except in emergency situations.	2002 Ill. Laws, P.A. 92-730.	Petty offense punishable by \$100 to \$250 fine.
Kentucky	Prohibits local governments from restricting driver mobile telephone use.	Ky. Rev. Stat. §65.873 (2005)	Not applicable.
Louisiana	Prohibits local jurisdictions from regulating cell phone use while driving.	La. Rev. Stat. Ann. §33:31 (West 2004)	Not applicable.
	Prohibits driving a motor vehicle with a television capable of receiving any prerecorded visual presentation unless the TV is behind the driver's seat or not visible to the driver while he or she is operating the vehicle.	La. Rev. Stat. Ann. §32:365 (West 2004)	No penalty specified.
	Creates a task force to study technological and non-technological driver distractions. The task force is to submit recommendations to the Legislature.	2003 SCR 63	Not applicable.
Maine	Requires those under age 21 to obtain an instruction permit and complete training prior to obtaining a driver's license. Prohibits a person with an instruction permit from using a mobile phone while driving.	Me. Rev. Stat. Ann. tit. 29-A, §1304(I)	No penalty specified.
Maryland	Prohibits holder of a learner's permit or provisional driver's license who is under age 18 from using a wireless communications	Md. Transportation Code Ann. §21-1123 (2005)	May suspend a violator's license up to 90 days and issue a restricted

	device while operating a motor vehicle. Enforceable as a secondary offense.		license.
Massachusetts	Cellular phone use is permitted as long as it does not interfere with the driver's operation of the vehicle and the driver keeps one hand on the steering wheel at all times.	Mass. Gen. Laws Ann. ch. 90, §13 (West 2004)	\$35 maximum fine for first violation; \$35 to \$75 for second violation; \$75 to \$150 for third and subsequent violations committed within one year.
	No person shall operate a moving school bus while using a mobile telephone.	Mass. Gen. Laws Ann. ch. 90, §7B	No penalty specified.
Minnesota	Prohibits drivers under age 18 who have a provisional license or instruction permit from using a cell phone while operating a motor vehicle. Provides exceptions for emergency situations.	2005 Minn. Laws, Chap. 6	Ability to get full license restricted.
Mississippi	Prohibits local jurisdictions from restricting driver mobile phone use.	2002 Miss. Laws, Chap. 491	Not applicable..
Nevada	Prohibits local jurisdictions from regulating driver mobile phone use.	2003 Nev. Stats., Chap. 237	Not applicable.
New York	Drivers prohibited from talking on hand-held mobile telephone while operating a motor vehicle.	N.Y. Veh. and Traffic Code §1225 (McKinney 2004)	Not more than \$100.
New Jersey	Prohibits drivers younger than age 21 who have only a learner's permit from using a mobile phone while driving.	N.J. Rev. Stat. §39:3-13 (2005)	\$100 fine or 90-day permit suspension.
	Prohibits the use of a cell phone while driving a school bus.	2002 N.J. Laws, Chap.120	\$100 to \$150 fine.
	Establishes the Driver Distraction and Highway Safety Task Force to study driver distractions and make recommendations.	2001 N.J. JR-9	Not applicable.
	Prohibits use of hand-held phones while driving. Enforceable as a secondary offense.	N.J. Rev. Stat. §39:4-97.3 (2005)	\$100 to \$250 fine.
Oklahoma	Prohibits local jurisdictions from restricting driver use of cell phone while operating a motor vehicle.	2001 HB 1081	Not applicable.
Oregon	Prohibits local jurisdictions from restricting driver use of cell phone while operating a motor vehicle.	2001 HB 2987	Not applicable.
Rhode Island	Prohibits use of cell phones by school bus drivers while driving except in the case of emergency.	R.I. Gen. Laws §31-22-11.8 (2005)	No penalty specified.
Tennessee	Prohibits driver use of a cell phone while operating a school bus.	Tenn. Code Ann. §58-8-192 (2004)	Class C misdemeanor, \$50 fine.
Texas	Prohibits driver under age 18 from using a wireless communication device while operating a motor vehicle during the 6 month period following the original issuance of a Class A, B, or C license. Prohibits driver under age 17 from using a wireless communication device while operating a	2005 SB 1257	Not available

	motorcycle during the 6 month period following the initial license issuance.		
	Prohibits school bus drivers from using a cell phone while operating a school bus.	2005 SB 1257	Not available
Washington	Requires state police to track information about the involvement of wireless communication devices in motor vehicle crashes in accident report forms. Requires the state police to include this information in its annual report of traffic safety statistics.	2005 Wash. Laws, Chap. 171	n/a
District of Columbia	Prohibits distracted driving, which is defined as inattention resulting in unsafe operation of a vehicle caused by activities unrelated to the operation of the vehicle, including reading, writing, personal grooming, interacting with pets or unsecured cargo, using personal communications technologies or engaging in any other activity that causes distraction.	2004 D.C. Stat., Chap. A15-0311	\$100
	Prohibits driver use of a hand-held phone while driving.		
	Prohibits school bus drivers or drivers with a learner's permit from using a cell phone while driving.		

Source: NCSL, 2005

 Cell Phones and Highway Safety: 2005 Legislative Update

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EXHIBIT 7
INSURANCE INFORMATION INSTITUTE REPORT



Insurance Information Institute

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Cell Phones and Driving

THE TOPIC

JANUARY 2006

In the United States over 200 million people used cell phones as of December 2005, compared with approximately 4.3 million in 1990, according to the Cellular Telecommunications & Internet Association.

Increased reliance on cell phones has led to a rise in the number of people who use the devices while driving. There are two dangers associated with driving and cell phone use. First, drivers must take their eyes off the road while dialing. Second, people can become so absorbed in their conversations that their ability to concentrate on the act of driving is severely impaired, jeopardizing the safety of vehicle occupants and pedestrians. Since the first law was passed in New York in 2001 banning hand-held cell phone use while driving, there has been debate as to the exact nature and degree of hazard. At first safety experts focused on the problem as part of the larger one of driver distractions in general. These can include anything that reduces driver concentration on road hazards from drinking coffee to talking with another passenger. Now there is increasing evidence that the dangers associated with cell-phone use outweigh those of other distractions. Safety experts also acknowledge that the hazard posed by cell phone conversations is not eliminated, and may even be increased, by the use of hands-free sets.

RECENT DEVELOPMENTS

- **Studies:** In December 2005 the National Highway Traffic Safety Administration (NHTSA) and the National Center for Statistics and Analysis released the results of their National Occupant Protection Use Survey (NOPUS), which found that in 2005, 6 percent of drivers used handheld cell phones, up from 5 percent in 2004. The survey also found that the jump was most noticeable among women (up to 8 percent from 6 percent in 2004) and young drivers ages 16 to 24 (up to 10 percent from 8 percent in 2004). The percentage of men using cell phones rose from 4 to 5 percent over the same period. Finally, the survey found that the number of drivers using headsets rose from 0.4 percent in 2004 to 0.8 percent in 2005. The NOPUS is a probability-based observational survey. Data on driver cell phone use were collected at random stop signs or stoplights only while vehicles were stopped and only during daylight hours.
- Motorists who use cell phones while driving are four times as likely to get into crashes serious enough to injure themselves, according to a study of drivers in Perth, Australia, conducted by the Insurance Institute for Highway Safety. The results, published in July, 2005, suggest that banning hand-held phone use won't necessarily improve safety if drivers simply switch to hands-free phones. The study found that injury crash risk didn't vary with type of phone.
- A government study released in June 2005 indicates that the distraction of cell phones and other wireless devices was far more likely to lead to crashes than other distractions faced by drivers. Researchers for the Virginia Tech Transportation Institute and the National Highway Traffic Safety Administration (NHTSA) tracked 100 cars and their drivers for a year and concluded that talking on cell phones caused far more crashes, near-crashes and other incidents than other distractions.
- These findings seem to contradict an August 2003 report from the AAA Foundation for Traffic Safety that concluded that drivers are far less distracted by their cell phones than other

common activities, such as reaching for items on the seat or glove compartment or talking to passengers. The study was based on the analysis of three hour videotapes from cameras installed in the vehicles of 70 drivers in North Carolina and Pennsylvania.

- Many studies have shown that using hand-held cell phones while driving can constitute a hazardous distraction. However, the theory that hands-free sets are safer has been challenged by the findings of several studies. A September 2004 study from the NHTSA found that drivers using hand-free cell phones had to redial calls 40 percent of the time, compared with 18 percent for drivers using hand held sets, suggesting that hands free sets may provide drivers with a false sense of ease.
- A study from the University of Utah published in the winter 2004/2005 issue of Human Factors, the quarterly journal of the Human Factors and Ergonomics Society, found that motorists who talked on hands-free cell phones were 18 percent slower in braking and took 17 percent longer to regain the speed they lost when they braked. An earlier University of Utah study by the same researchers found that drivers talking on hands-free cell phones were less likely to recall seeing pedestrians, billboards or other roadside features.
- A study published in the March 2003 issue of The Journal of Experimental Psychology: Applied, found that the distraction risk is as high for drivers who use hands-free cell phones, as for drivers who use hand-held devices.
- **State and Federal Initiatives:** The number of state legislatures debating measures that address the problem of cell-phone use while driving and other driver distractions continues to rise. According to the National Conference of State Legislatures, over two-thirds of states looked at bills that would restrict the use of cell phones while driving in the first part of 2005. Four states -- Colorado, Delaware, Maryland and Tennessee -- banned their use by young drivers in 2005. In May, the city of Chicago banned the use of hand held cell phones while driving, imposing penalties of \$50 or \$200 (the latter if the driver is involved in an accident).
- In October 2005 a Connecticut law banning the use of hand-held cell phones while driving went into effect. The measure goes further than some similar laws in other states and municipalities. Drivers in Connecticut can be fined \$100 not only for using a cell phone, but those pulled over for speeding or other moving violations can be fined for other driving distractions such as putting on makeup or turning to discipline children in the back seat. In January 2004 New Jersey passed a bill prohibiting the use of cell phones while driving and in April of that year the District of Columbia (DC) followed suit. In New Jersey fines range between \$100 and \$250; in DC fines are \$100. New York was the first state to enact such legislation in 2001. Drivers there face fines of \$100 for the first violation, \$200 for the second and \$500 thereafter.
- In June 2003 federal and state highway safety agencies issued new guidelines for reporting crashes caused by distracted drivers. The authorities are asking police across the nation to note whether a driver was distracted and the source of the distraction, such as cell phone, radio, passenger, or another vehicle.
- **Businesses:** Businesses are increasingly prohibiting workers from using cell phones while driving to conduct business. In July 2004, the California Association of Employers recommended that employers develop a cell phone policy that requires employees to pull off the road before conducting business by cell phone.
- **Court Decisions:** In December 2004 a civil case involving a car crash caused by a driver using a cell phone for business reasons was dismissed when the driver's employer, Beers Skanska Inc., agreed to pay the plaintiff \$5 million. The plaintiff in the case being heard in Georgia's Fulton County Superior Court was severely injured in the crash. The suit is among the most recent of several cases where an employer has been held liable for an accident caused by a driver using a cell phone. See background section on Employer and Manufacturer Liability.

- In mid-October 2004 in the case of Yoon v. Wagner a Virginia jury awarded \$2 million in damages to the family of a young girl who was killed by a driver using a cell phone at the time of the accident. The plaintiff also filed a suit against the driver's employer after it became clear through an examination of phone records that the driver had been talking to a client when she hit the girl.

BACKGROUND

Cell phones play an integral role in our society. However, the convenience they offer must be judged against the hazards they pose. Inattentive driving accounted for 6.4 percent of crash fatalities in 2003 — the latest data available — according to the U.S. Department of Transportation. Inattentive driving includes talking, eating, putting on make up and attending to children. Using cell phones and other wireless or electronic units are also considered distractions.

As many as 40 countries may restrict or prohibit the use of cell phones while driving. Countries reported to have laws related to cell phone use include Australia, Austria, Belgium, Brazil, Botswana, Chile, the Czech Republic, Denmark, Egypt, Finland, France, Germany, Greece, Hungary, India, Ireland, Israel, Italy, Japan, Jordan, Kenya, Malaysia, the Netherlands, Norway, the Philippines, Poland, Portugal, Romania, Russia, Singapore, the Slovak Republic, Slovenia, South Africa, South Korea, Spain, Sweden, Switzerland, Taiwan, Turkey, Turkmenistan, the United Kingdom and Zimbabwe. Most countries prohibit the use of hand-held phones while driving. Drivers in the Czech Republic, France, the Netherlands and the United Kingdom may use cell phones but can be fined if they are involved in crashes while using the phone. Drivers in the United Kingdom and Germany also can lose insurance coverage if they are involved in a crash while talking on the phone.

Supporters of restrictions on driving while using a cell phone say that the distractions associated with cell phone use while driving are far greater than other distractions. Conversations using a cell phone demand greater continuous concentration, which diverts the driver's eyes from the road and his mind from driving. Opponents of cell phone restrictions say drivers should be educated about the effects of all driver distractions. They also say that existing laws that regulate driving should be more strictly enforced.

Employer and Manufacturer Liability: Although only a handful of high-profile cases have gone to court, employers are still concerned that they might be held liable for accidents caused by their employees while driving and conducting work-related conversations on cell phones. Under the doctrine of vicarious responsibility, employers may be held legally accountable for the negligent acts of employees committed in the course of employment. Employers may also be found negligent if they fail to put in place a policy for the safe use of cell phones. In response, many companies have established cell phone usage policies. Some allow employees to conduct business over the phone as long as they pull over to the side of the road or into a parking lot. Others have completely banned the use of all wireless devices.

In an article published in the June 2003 edition of the North Dakota Law Review, attorney Jordan Michael proposed a theory of cell phone manufacturer liability for auto accidents if they fail to warn users of the dangers of driving and talking on the phone at the same time. The theory holds that maker liability would be similar to the liability of employers who encourage or demand cell phone use on the road. Holding manufacturers liable would cover all persons who drive and use cell phones for personal calls. Michael notes that some car rental agencies have already placed warnings on embedded cell phones in their cars.

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